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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,131	07/21/2006	James E. Price	PHIT8686	6155

1688 7590 04/09/2007  
POLSTER, LIEDER, WOODRUFF & LUCCHESI  
12412 POWERSCOURT DRIVE SUITE 200  
ST. LOUIS, MO 63131-3615

EXAMINER
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LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

6D

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/568,131		PRICE, JAMES	
	<b>Examiner</b>		<b>Art Unit</b>	
	Kim M. Lewis		3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)                |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application      |
| Paper No(s)/Mail Date <u>5/11/06</u> .   | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> . |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 5/11/06 has been received and made of record. Note the acknowledged form PTO-1449 enclosed herewith.

### ***Response to Amendment***

2. The preliminary amendment 2/10/06 has been received and made of record. As requested, the specification and claim 7 have been amended.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Dow and U.S. Patent No. 2,905,174 ("Smith").

As regards claim 1, Carmody disclose a bandage for cosmetic use, thereby being a cosmetic bandage. The bandage comprises a transparent backing (10), a pressure sensitive adhesive (12), a pad (16) and a pigmented plastic strip, which lays on top of the pad.

Carmody fails to teach that the adhesive is transparent and that the pigment is non-toxic. As to the transparent adhesive, Smith teaches it is conventional in the art to provide adhesive bandages having pigment therein with transparent adhesive for the inherent purpose of being invisible to the eye so render the bandage inconspicuous.

In view of Smith, it would have been obvious to one having ordinary skill in the art to use a transparent pressure sensitive adhesive for the purpose of rendering the adhesive invisible to the eye so render the bandage inconspicuous.

As to the non-toxic pigment, Dow, Jr. discloses a color matched adhesive bandage comprising a non-toxic pigment to inherently insure that the user is not poisoned by the pigment.

In view of Carmody, it would have been further obvious to substitute the colored plastic strip (14) of Carmody for the non-toxic pigment of Dow, Jr. to insure that the user is not poisoned by the pigment.

As regards claim 2, note the disclosure of the use of pressure sensitive adhesive at col. 2, line 9 of Carmody.

As regards claim 3, note removable strips (18) of Carmody.

As regards claim 4, Carmody fails to teach a plurality of pigments are blended to match the skin. However, Dow, Jr. at col. 3, lines 63-66 discloses the use of a plurality of colors (pigments) in order to achieve the desired color to match the skin. In view of Dow, Jr., it would have been obvious to one having ordinary skill in the art at the time the invention was made to blend a plurality of colors (pigments) to achieve the desired color of the colored strip (14) of Carmody in order to match the skin.

As regards claim 5, Carmody fails to teach that the color is embedded in the pad. Absent a critical teaching and/or showing of unexpected results derived from use of embedded the pigment in the pad, the examiner contends that any means for providing color to the bandage of Carmody to achieve the desired result of matching the bandage to the skin is an obvious design choice which does not distinguish applicant's invention.

Regarding claim 6, as can be seen from Figs. 2 and 4, when the components of the bandage are joined together, pigmented (colored) strip (14) lays on (coated on) the top of the pad.

6. Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,687,136 ("Carmody").

As regards claim 7, Carmody discloses a bandage and inherently discloses the claimed method of constructing the bandage. As can be seen from Fig. 4 and as can be read from col. 2, Carmody discloses applying a pigment in the form of a colored plastic strip (14) to a transparent backing (10). Carmody fails to teach that the pigment is a non-toxic pigment. However, Dow, Jr. discloses a color matched adhesive bandage comprising a non-toxic pigment to inherently insure that the user is not poisoned by the

pigment.

In view of Carmody, it would have been obvious to substitute the colored plastic strip (14) of Carmody for the non-toxic pigment of Dow, Jr. to ensure that the user is not poisoned by the pigment.

As regards claim 8, the adhesive must be applied to the backing before attaching pad (16) in order that pad (16) remains adhered to the backing.


As regards claim 9, note removable strips (18).

As regards claims 10 and 11, the steps of applying the pigment to the by a silk screening process or a flood printing process is neither disclosed nor taught by Carmody. Absent a critical teaching and/or a showing of unexpected results derived from applying the pigment to the pad by a silk screening process or a flood printing process, the examiner concludes that the process by which the pigment (color) is added to the pad is an obvious design choice, which does not distinguish applicant's invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Monday to Friday, from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kim M. Lewis  
Primary Examiner  
Art Unit 3772

kml  
April 2, 2007